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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 3969**  
Kazuhiko MATSUMURA et al. : Docket No. 2003\_1003A  
Serial No. 10/628,394 : Group Art Unit 1632  
Filed July 29, 2003 : Examiner Rei T. Shiao

METHOD FOR PRODUCING AN OPTICALLY  
ACTIVE  $\beta$ -AMINO ACID

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**RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is responsive to the Official Action dated December 21, 2004.

The Official Action constitutes a requirement for restriction.

Applicants elect to prosecute the invention of Group I, with traverse.

In response to the species requirement, Applicants elect the species of the compound of formula (2), wherein  $R^1$  is methyl,  $R^2$  hydrogen and  $R^3$  methoxy. This election is supported by working Examples 9-14.

The restriction requirement is respectfully traversed.

The grouping of compounds within Groups I, II and III are respectfully submitted to be arbitrary and lacking a reasonable basis of classification. The groupings have been made on the basis of the heterocyclic group or heteroaryl. In addition, five-membered heterocyclic groups such as furan ring containing oxygen and thiophene ring containing sulfur belong to Group III, while at the same time pyridine ring containing nitrogen atom being to Group III.

The restriction requirement is also based on WO 97/08145 wherein a compound belonging to the Group I of the present rejection as disclosed on page 116, while a compound belonging to

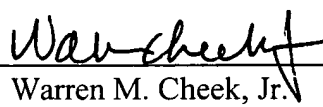
the Group II is disclosed on page 592, and two compounds belonging to the Group III are disclosed on pages 111 and 175. Copies of the pages of the cited reference are enclosed herewith. The compounds belonging to Group I, Group II and Group III of the present application are disclosed together under the same general formula in the cited reference and are recognized as one single invention by those skilled in the art.

In view of the foregoing, it is respectfully submitted that the claimed compounds are related by a similar core and similar utility and should be examined in the same application.

Reconsideration and withdrawal of the restriction requirement is thus respectfully solicited. To the extent possible, the Examiner is kindly requested to expand the scope of examination beyond the elected subject matter.

Respectfully submitted,

Kazuhiko MATSUMURA et al.

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